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10/585,521

07/07/2006

Udo Bernhardt

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06/11/2009

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EXAMINER

NGUYEN, THUKHANH T

ART UNIT

PAPER NUMBER

1791

NOTIFICATION DATE

DELIVERY MODE

06/11/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

officeactions@ohiopatent.com
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| | | | |
|------------------------------|--|---------------------------------------|--|
| Office Action Summary | Application No. 10/585,521 | Applicant(s) BERNHARDT, UDO | |
| | Examiner THU KHANH T. NGUYEN | Art Unit 1791 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-48 is/are pending in the application.
- 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/07/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 25-33, drawn to a method for manufacturing tied dough blanks, classified in class 426, subclass 499.
 - II. Claims 34-48, drawn to an apparatus for forming tied dough products, classified in class 425, subclass 323.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus such as one with the extruder for extruding a strand of dough instead of using the shaping table with the shaping tool.

3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

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- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either

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instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. During a telephone conversation with Mr. Frank Foster on June 02, 2009 a provisional election was made without traverse to prosecute the invention of group II, claims 34-48.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

5. The disclosure is objected to because of the following informalities: the specification refers to claims 1 and 9 on page 4, however, these claims have been canceled.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 35-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (pages 1-7 of the specification) which also is the DE 10029171 in view of Hemmerich (5,492,708).

The admitted prior art (or the DE reference) discloses an apparatus for manufacturing pretzels, comprising a shaping table with U-shape shaping tool and a tying head for grasping the dough strand ends and tying the dough strand, wherein the tying head includes gripping devices

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(39, 40) and actuator device (5) for controlling the position and/or tying of the dough strand, wherein the tying head is capable of moving from a gripping position to a stretching position (current specification, pages 6-7).

However, the admitted prior art fails to disclose a programming technology for controlling the movement of the tying head.

Hemmerich discloses an apparatus for forming pretzels, comprising a control system with a programmable controller acting on the drive units in order to control the gripping and twisting of the pretzels (col. 3, lines 59-65; col. 4, lines 5-15).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the admitted prior art or the DE reference with a programmable control system as taught by Hemmerich so that the movement of grippers can be accurately and automatically controlled.

In regard to claim 36, Hemmerich discloses a stepper motor (31x-z) connected to a linear drive unit for controlling the movement of the gripper system relative to the position of the dough strand (col. 6, lines 24-38). It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the DE reference by providing a stepper motor connecting to a gripper drive unit as taught by Hemmerich in order to regulate the movement of the grippers during the process.

In regard to claims 37-40 and 44, the DE reference further discloses sensors (20, 21) for measuring the position of the dough strand (36) on the shaping table (2), wherein the sensors (20, 21) disposed above the deflection sheaves (Fig. 2) around which the conveyors (3, 4) pass and on the sides of the shaping table (2).

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In regard to claims 41-42, the DE reference further discloses that tying head is movable from the stretching position into a tying position and to a depositing position (Figs. 2-6).

In regard to claims 43, the DE 10029171 reference further discloses a plurality of movable shaping pins (5).

In regard to claim 46, wherein the tying head (9) further comprises a rotary drive (26) connected to a control unit (see abstract of the DE reference) for rotating the tying head 360° (Fig. 1, 22).

In regard to claims 47-48, Hemmerich further discloses a rotation system for rotating the twisting the dough strand forming pretzels (Figs. 2A-2D), wherein the rotation system is connected to the programmable controller to govern the speed of rotation, angle and/or timing of the rotating drive unit according to the varying demands of productions (col. 4, lines 5-14). It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the DE reference by programming the controller as taught by Hemmerich in order to control the regulate the rotation of the dough grippers, such as the speed of rotation, angle and/or timing of the rotating drive unit depending on the demands of the forming pretzels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THU KHANH T. NGUYEN whose telephone number is (571) 272-1136. The examiner can normally be reached on 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yogendra N Gupta/
Supervisory Patent Examiner, Art Unit 1791

TN